

REMARKS

I. INTRODUCTION

Favorable reconsideration of this application, in light of the present amendments and the following discussion, is respectfully requested.

II. STATUS OF THE CLAIMS

Claims 1-11 are pending, of which claim 1 is independent. By this amendment, claim 1 is amended. Support for the amendment can be found, for instance, in paragraphs [0050] and [0051] and Fig. 1. No new matter is added hereby.

III. SUMMARY OF THE OFFICE ACTION

In the outstanding Office Action, claims 1-4 and 6-11 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimada (US Patent Application Publication No. 2002/0052957) in view of Chang et al. (US Patent 6,134,584), Feigenbaum (US Patent 6,377,974) and Halogen (US Patent 5,887,254); and claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimada, Chang, Feigenbaum and Halogen as applied to claim 1, and further in view of Trossen et al. (US Patent Application Publication No. 2004/0111476).

IV. ARGUMENTS

Claims 1-4 and 6-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimada in view of Chang, Feigenbaum and Halonen. Claim 5 is rejected under 35 U.S.C. § 103(a) over Shimada in view of Chang, Feigenbaum and Halonen, and further in view of Trossen. The rejections are respectfully traversed for the following reasons.

As amended, independent claim 1 recites a method for downloading a digital file comprising, among other steps, the steps of "verifying that the current time falls within a

predetermined time slot, checking on the existence of new files to be downloaded and querying for adequate storage space” prior to the connection step and “monitor[ing] the bandwidth in real time and, as necessary, caus[ing] the downloading to be temporarily suspended.”

The prior art does not teach or suggest a method for downloading a digital file having the aforementioned steps. For instance, Shimada discloses a system for downloading a file from a server to a terminal device at a scheduled time (see Abstract). When the date and time set by the user arrives, the communication control section makes the terminal device access the server machine to download the file (see [0044] of Shimada). For example, if the server is scheduled to download a file to a user’s home A at 19:00 (see [0066]), when the clock turns from 18:59 to 19:00, the control section automatically makes the server download the file to the terminal device in the user’s home A. Thus, the system of Shimada does not “verify” whether 19:00 is between 18:59 and 19:01 or outside of 18:59 and 19:01. It also does not question whether 19:00 is 19:00. The downloading simply occurs when the timer hits 19:00. The Examiner asserts on page 12 of the Office Action that the “verification of the time slot occurs when the client terminal device initiates the download at 19:00.” Such an assertion is respectfully traversed because there is no “verification” in Shimada. There is no support, teaching or suggestion whatsoever in Shimada that the system would “verify” that 19:00 is within a time slot before downloading. The Examiner fails to show support or teaching in Shimada for the assertion of such “verification” limitation.

Moreover, Shimada does not teach or suggest the steps of checking the existence of new files to be downloaded from the server and querying for adequate storage space. In Shimada, the server is scheduled to download a file at a certain time; however, the server

does not check whether the file is new. The server also does not check whether there is adequate storage space in the terminal device. Neither Chang nor Feigenbaum nor Halonen teaches or suggests the aforementioned features. Chang teaches a system for downloading files from a server to a user's designated storage space, and interrupting the downloading when the time set by the user or storage space at the user's terminal device reaches its limits (see col. 6, lines 47-51). Because the system in Chang downloads the file until the time limit is up or storage space reaches its limit, it implies that the system in Chang does not check whether the user's storage space is adequate prior to the connection step, as recited in claim 1. If the system of Chang queries whether there is adequate storage space prior to the connection step, it would not have downloaded until the storage space is full.

Feigenbaum teaches that, after the downloading of a file is interrupted, it is known in the art to resume the downloading at the point where the data was interrupted, rather than from the beginning of the file (see col. 1, lines 20-30). Halonen teaches the function of downloading a file in the background while a telephone continues to make and receive phone calls (see col. 5, lines 47-54). Thus, neither Feigenbaum nor Halonen teaches or suggests the steps of checking on the existence of new files or querying for adequate storage space at the terminal device, as recited in claim 1.

Regarding the step of monitoring the bandwidth in real time, the Examiner alleges on page 4 of the Final Office Action that in Chang, when the downloading is interrupted because the downloading time exceeds the user's earlier input, it implicitly means the bandwidth is monitored to calculate the download time. Such an assertion is respectfully traversed. As stated previously, the system in Chang interrupts the downloading when the time set by the

user is up; thus, the system in Chang is concerned about the time that the user has estimated. The system in Chang does not monitor the bandwidth.

On page 11 of the Final Office Action, the Examiner discusses the “estimated” time that the user sets up. The Examiner asserts that “the estimated downloading time takes into account the minimum bandwidth.” Such an assertion is also respectfully traversed because the “estimated” time disclosed in Chang does not relate to the bandwidth. Rather, it relates to the time that the user estimates how long he/she wants the downloading time to be. If, by any chance, the user thought about setting up the downloading time during off-peak hours, as alleged by the Examiner, such a thought would be a mental state done by the user, but it is not an actual step performed by the system as recited in the claims. Also on page 11, the Examiner quotes the minimum bandwidth requirement stated in col. 6, lines 20-22 of Chang. That bandwidth is the minimum that the system of Chang requires when the user sets up the downloading service (see col. 5, lines 59-65). The system in Chang does not monitor the bandwidth in real time after that initial set up by the user. As a result, it is respectfully submitted that the estimated time set by the user in Chang is not the same as or equivalent to the step of monitoring the bandwidth in real time, as recited in claim 1.

From the discussion above, it is respectfully submitted that the prior art, taken singly or in combination, does not teach or suggest the combination of steps recited in claim 1. Moreover, it appears that the rejections are hindsight reconstructions of the claimed invention. Dependent claims 2-11 are also believed to be allowable over the prior art for the same reasons. Accordingly, it is respectfully requested that the rejections of claims 1-4 and 6-11 under 35 U.S.C. 103(a) as being unpatentable over Shimada in view of Chang, Feigenbaum and Halonen, and claim 5 under 35 U.S.C. 103(a) over Shimada in view of

U.S. Serial No: 10/562,316
Reply to Final Office Action of October 28, 2008
Atty Docket No: 124543-00101

Chang, Feigenbaum and Halonen, and further in view of Trossen be reconsidered and withdrawn.

V. CONCLUSION

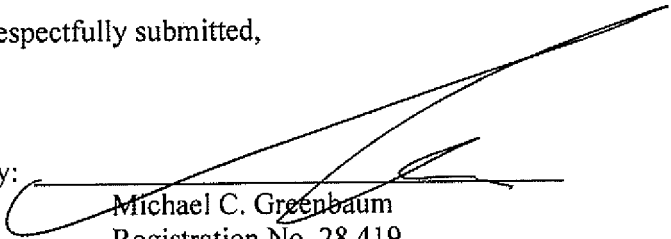
In view of the foregoing discussion and present amendments, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Please charge any shortage of fees or credit any overpayment thereof to BLANK ROME LLP, Deposit Account No. 23-2185 (124543-00101). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this report, Applicant hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized above.

Respectfully submitted,

Date: December 29, 2008

By:



Michael C. Greenbaum
Registration No. 28,419
Attorney for Applicant

BLANK ROME LLP
600 New Hampshire Avenue N.W.
Washington, D.C. 20037
Telephone: (202) 772-5800
Facsimile: (202) 772-5858